

Before The
Surface Transportation Board

Finance Docket No. 33388 (Sub-No. 100)

CSX CORPORATION AND CSX TRANSPORTATION, INC.
NORFOLK SOUTHERN CORPORATION AND
NORFOLK SOUTHERN RAILWAY COMPANY
— CONTROL AND OPERATING LEASES/AGREEMENTS —
CONRAIL INC. AND CONSOLIDATED RAIL CORPORATION

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**MOTION OF NORFOLK SOUTHERN CORPORATION AND NORFOLK SOUTHERN
RAILWAY COMPANY FOR LEAVE TO FILE REPLY TO REPLY OF
BRIDGEWATER RESOURCES, INC. AND ECDC ENVIRONMENTAL, L.L.C.**

Norfolk Southern Corporation and Norfolk Southern Railway Company (collectively, "NS") respectfully move for leave to file a reply to the reply filed on February 6, 2007 by petitioners Bridgewater Resources, Inc. and ECDC Environmental, L.L.C. (collectively, "Petitioners" or "BRI").

In their petition that initiated this proceeding and in every subsequent pleading until their latest reply, Petitioners have based their claim that BRI's facility is entitled to switching service by Conrail on the contention that their industrial spur, known as the Royce Spur, connects to trackage on the Lehigh Line (which runs east and west to the south of the BRI facility) that is part of the North Jersey Shared Assets Area ("NJSAA"); they have contended that trackage is part of the NJSAA because they have claimed that the point of connection is east of CP-Port Reading Junction, which is the boundary on the Lehigh Line between NS trackage and NJSAA trackage established by the Transaction Agreement. They have supported this contention with

two verified statements of a purported expert, and the Board, despite indications of doubt, has permitted Petitioners to pursue discovery and to file a supplemental statement to buttress the contention. NS, CSX and Conrail have spent considerable time and effort to address this contention and to respond to Petitioners' discovery.

In their reply filed on February 6, 2007, however, Petitioners completely abandon the contention that the Royce Spur connects to trackage that is part of the NJSAA; the reply instead comes up with an entirely new argument as to why the BRI facility is entitled to switching service by Conrail, an argument that was not even hinted at in the petition or in any subsequent pleading. Thus, in their reply, Petitioners state (BRI Reply at 3): "BRI/ECDC do not contest the railroads' evidence indicating that the term 'CP-Port Reading Jct.' was intended to refer to Milepost 35.92 on the Lehigh Line," and they acknowledge that "this point is less than half a mile *east* of the connection between the Lehigh Line and BRI's Royce Spur."¹ Emphasis supplied.

Petitioners' new argument is based on the assertion that Conrail is entitled and obliged to serve the BRI facility from an entirely new direction, from the Raritan Valley Line, which runs east and west to the north of the facility. Petitioners make this novel argument despite the facts that (1) Conrail sold the Raritan Valley Line to New Jersey Transit in the early 1980's, (2) there has been no connection between the Raritan Valley Line and the so-called Reading Connector (which Conrail sold to BRI's former owner and which BRI now leases) since the early 1980s, when New Jersey Transit ceased commuter service over the Reading Connector and the Trenton Line and removed the switch connection, and (3) BRI does not *want* or *seek* service from Conrail

¹ In their reply, Petitioners assert that whether their facility may be served by Conrail "depends largely – but not entirely – on what the parties to the Transaction Agreement intended in designation 'CP-Port Reading Jct.' as the westerly limit of the North Jersey Shared Assets Area ('NJSAA') on the former Conrail Lehigh Line." BRI Reply at 2. Given their concession concerning the location of CP-Port Reading Junction, however, it appears now that BRI's claim does not depend on that issue at all.

via the Raritan Valley line, but wants service from Conrail over NS' Lehigh Line trackage and the NS connection to the Royce Spur by which NS as served BRI since Split Date.

NS submits that Petitioners new argument is grounded on incorrect facts and erroneous propositions of law, including erroneous contentions regarding provisions of the Transactions agreement, and fails to disclose other facts refuting its contentions. Petitioners' new argument and the factual and legal assertions on which it is based are not matters that NS could reasonably have anticipated, and NS has not had an opportunity to respond to them. NS therefore respectfully requests the Board to permit it to file a response to those contentions, as it has on many occasions in similar circumstances to insure a complete record, due process to the parties before it and a just determination of the issues. *See* 49 C.F.R. § 1100.3, which provides that the Board's rules are to be "construed liberally to secure just . . . determination of the issues presented." *See also, e.g. MVC Transportation, LLC – Acquisition Exemption – P&LE Properties, Inc.*, Finance Docket No. 34462, served October 20, 2004; *Norfolk Southern Railway Co. – Abandonment Exemption – In Nottoway, Prince Edward, Cumberland, and Appomattox Counties, VA*, Docket No. AB-290 (Sub-No. 252X), served January 18, 2005; *Union Pacific Railroad Co. – Abandonment Exemption – In Rio Grande and Mineral Counties, CO*, Docket No. AB-33 (Sub-No. 132X), served June 22, 2004; *CSX Transportation Inc. – Abandonment Exemption – In Summit County, OH*, Docket No. AB-55 (Sub-No. 631X), served May 12, 2004; *Reading Blue Mountain and Northern Railroad Co. – Lease and Operation Exemption – Norfolk Southern Railway Co. and Pennsylvania Lines LLC*, Finance Docket No. 34048, served August 1, 2001; *Jefferson Terminal Railroad Co. – Acquisition and Operation Exemption – Crown Enterprises*, Finance Docket No. 33950, decision served March 19, 2001.

If the Board permits NS to file a reply to BRI's reply, NS respectfully requests that it allow NS to file its reply 30 days after the date of this motion, March 15, 2006, to file its reply in view of the fact that BRI's reply is based on entirely new factual and legal assertions

CONCLUSION

The Board should grant the motion of NS to file a reply to the reply filed by Petitioners on February 6, 2007.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I certify that I have this 13th day of February, 2007, caused copies of the foregoing Motion of Norfolk Southern Corporation and Norfolk Southern Railway Company For Leave to File a Reply to the Reply of Bridgewater Resources, Inc. and ECDC Environmental, L.L.C. to be served by hand or first class mail, postage prepaid, on the following:

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